

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 LIONEL WILLIAMS,

12  
13 Petitioner,

14 v.

15 DAVID LONG, Warden,

16 Respondent.

Civil 13cv2676-LAB (DHB)  
No.

**ORDER DENYING WITHOUT  
PREJUDICE PETITIONER'S  
REQUEST FOR APPOINTMENT  
OF COUNSEL**

**[ECF No. 2]**

17 Petitioner, Lionel Williams, a state prisoner proceeding *pro se*, has requested  
18 appointment of counsel to pursue his petition for a writ of habeas corpus brought  
19 pursuant to 28 U.S.C. § 2254. [EFC No. 2.] The request for appointment of counsel is  
20 denied without prejudice.

21 The Sixth Amendment right to counsel does not extend to federal habeas corpus  
22 actions by state prisoners. *McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *Chaney v.*  
23 *Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986); *Knaubert v. Goldsmith*, 791 F.2d 722, 728  
24 (9th Cir. 1986). However, financially eligible habeas petitioners seeking relief pursuant  
25 to 28 U.S.C. § 2254 may obtain representation whenever the court “determines that the  
26 interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B) (2010); *Terrovona v.*  
27 *Kincheloe*, 912 F.2d 1176, 1181 (9th Cir. 1990); *Bashor v. Risley*, 730 F.2d 1228, 1234  
28 (9th Cir. 1984); *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994).

1 The interests of justice require appointment of counsel when the court conducts an  
2 evidentiary hearing on the petition. *Terrovona*, 912 F.2d at 1177; *Knaubert*, 791 F.2d at  
3 728; Rule 8(c), 28 U.S.C. foll. § 2254. The appointment of counsel is discretionary  
4 when no evidentiary hearing is necessary. *Terrovona*, 912 F.2d at 1177; *Knaubert*, 791  
5 F.2d at 728. If the Court determines that an evidentiary hearing becomes necessary in the  
6 future, the Court will require appointment of counsel at that time.

7 In the Ninth Circuit, “[i]ndigent state prisoners applying for habeas corpus relief  
8 are not entitled to appointed counsel unless the circumstances of a particular case indicate  
9 that appointed counsel is necessary to prevent due process violations.” *Chaney*, 801 F.2d  
10 at 1196; *Knaubert*, 791 F.2d at 728-29. The Ninth Circuit considers the clarity and  
11 coherence of a petitioner’s district court pleadings to determine the necessity of  
12 appointment of counsel; if clear and understandable, the court typically finds appointment  
13 of counsel unnecessary. *LaMere v. Risely*, 827 F.2d 622, 626 (9th Cir. 1987.) Further,  
14 the Ninth Circuit notes that “[w]here the issues involved can be properly resolved on the  
15 basis of the state court record, a district court does not abuse its discretion in denying a  
16 request for court-appointed counsel.” *Hoggard*, 29 F.3d at 471.

17 At this stage of the proceedings, it does not appear that appointment of counsel is  
18 required to prevent a due process violation. There is no indication that the issues are too  
19 complex or that Petitioner is incapable of presenting his claims. From the face of the  
20 Petition, filed *pro se*, it appears that Petitioner has a good grasp of this case and the legal  
21 issues involved. He has also been able to articulate the factual and legal bases of his  
22 claim in a clear and coherent manner. Indeed, Petitioner has been successful in getting  
23 a Petition on file, filing a motion for leave to proceed *in forma pauperis*, and filing the  
24 instant motion. Moreover, the Petition in this case was pleaded sufficiently to warrant  
25 this Court’s order directing Respondent to file an answer or other responsive pleading to  
26 the Petition. Finally, it appears the Court will be able to properly resolve the issues  
27 involved on the basis of the state court record. Therefore, the Court finds that the  
28 interests of justice do not require the appointment of counsel at this time.

1 Accordingly, Petitioner's Motion for Appointment of Counsel is **DENIED** without  
2 prejudice.

3 IT IS SO ORDERED.

4 DATED: November 18, 2013

5   
6 DAVID H. BARTICK  
7 United States Magistrate Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28